



FEDERAL ELECTION COMMISSION
Washington, DC 20463

JUN 30 1998

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mary Ellen Brennan, Treasurer
Galveston County Democratic Party
912 Oak Vista Court
Friendswood, TX 77546

RE: MUR 4763

Dear Ms. Brennan:

On June 23, 1998, the Federal Election Commission ("the Commission") found that there is reason to believe the Galveston County Democratic Party and you, as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Submit Written Answers and Subpoena to Produce Documents must be submitted within 30 days of your receipt of this order and subpoena. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be

pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Thomas J. Andersen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures

Order and Subpoena

Factual and Legal Analysis

Procedures

Designation of Counsel Form

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)
) MUR 4763
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Galveston County Democratic Party
Mary Ellen Brennan, Treasurer
912 Oak Vista Court
Friendswood, TX 77546

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

MUR 4763

Mary Ellen Brennan, Treasurer

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set her
hand in Washington, D.C. on this 30th day of June, 1998.

For the Commission,

Joan D. Aikens

Joan D. Aikens
Chairman

ATTEST:

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

Attachments

Instructions and Definitions

Questions and Document Requests

INSTRUCTIONS

In answering this Subpoena to Produce Documents and Order to Submit Written Answers, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1993 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"Galveston County Democratic Party" shall mean the named respondents in this action to whom these discovery requests are addressed, including all officers; employees, whether paid or

unpaid; supervisors; volunteers; agents or persons otherwise working on behalf of or at the request of the named respondents; co-workers; subordinates; staff or attorneys thereof.

"Transfer" means any transfer of funds made in connection with federal elections, including any intra-party transfers, contributions or in-kind contributions, direct or indirect payments, distributions, loans, advances, deposits, or gifts of money, or any services, or anything of value.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers, records and magnetic or electronic media of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained. If a document request calls for a document that is maintained on or in a magnetic, optical or electronic medium (for example, but not limited to, computer tape, diskette, or CD-ROM), provide both "hard" (i.e., paper) and "soft" (i.e., in the magnetic or electronic medium) copies, including drafts, and identify the name (e.g., WordPerfect, Microsoft Word for Windows, Pro Write, etc.) and version numbers by which the document(s) will be the most easily retrieved.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document, the author of the document, and all recipients of the document (including all persons, other than the primary recipient(s) of the document, who received copies, such as "cc" and "bcc" recipients).

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

Additionally, where the person to be identified is or was an officer, supervisor, employee, agent, co-worker, volunteer, subordinate, staff or attorney of the Galveston County Democratic Party or was acting on its behalf in any capacity between January 1, 1993, and the present, "identify" shall mean state the person's title and responsibilities, the social security number of the person, the individual to whom the person reported, and whether the person is still an employee or agent of the Galveston County Democratic Party. If the person is no longer an employee or agent of the Galveston County Democratic Party, "identify" shall further mean state the beginning and ending dates of a person's employment or agency. If the person began their employment with the Galveston County Democratic Party between January 1, 1993 and the present, "identify" shall further mean state the beginning date of their employment, and where the person was employed immediately prior to beginning employment with the Galveston County Democratic Party.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

QUESTIONS AND DOCUMENT REQUESTS

1. Produce all documents, including changed or superseded versions, related to the creation, organization, and operation of the Galveston County Democratic Party, including but not limited to the constitution, charter, bylaws, rules, regulations, resolutions, agreements, contracts, procedural manuals, memoranda of understanding or any comparable governing documents.
2. State the relationship between the Galveston County Democratic Party and each of the following (Texas) committees, including whether the committees have ever been financed, maintained or controlled in any manner by the Galveston County Democratic Party, or vice versa. Describe fully such financial support, maintenance or control.
 - a. Texas Democratic Party
 - b. Bexar County Democratic Party
 - c. Dallas County Democratic Party
 - d. Harris County Democratic Party
 - e. Jefferson County Democratic Party
 - f. Travis County Democratic Party
 - g. 21st Century Political Action Committee (name of record for the Tarrant County Democratic Party-Federal Account)
 - h. Nueces County Democratic Party
 - i. El Paso County Democratic Party
 - j. Hays County Democratic Party Executive Committee
 - k. Potter-Randall County Democratic Club
3. Provide the date, amount and purpose of each and every transfer (including all direct and in-kind contributions) between the Galveston County Democratic Party and each of the committees listed in Question 2.

4. Identify and produce copies of all documents, including deposit slips and negotiated checks (front and back if applicable), representing, reflecting, referring to or relating to each and every transfer (including all direct and in-kind contributions) between the Galveston County Democratic Party and each of the committees listed in Question 2.
5. If not produced in response to Question 4, identify and produce all documents that formed the basis for determining the timing and amounts of each and every transfer (including direct and in-kind contributions) between the Galveston County Democratic Party and each of the committees listed in Question 2.
6. State whether there have ever been any written or unwritten policies or guidelines formulated between January 1, 1987 and the present concerning the transfers of funds (including direct and in-kind contributions) between the Galveston County Democratic Party and each of the committees listed in Question 2. If so, produce copies of all such written policies. Describe in full the terms of all such unwritten policies.
7. State whether there have ever been any written or unwritten contribution-sharing agreements or contracts, party quotas or dues structures, central accounting arrangements or any other financial arrangements entered into from January 1, 1987 to the present between the Galveston County Democratic Party and each of the committees listed in Question 2. If so, produce copies of all such written agreements, contracts or arrangements. Describe in full the terms of all such unwritten agreements, contracts or arrangements.
8. State whether any contributions by the Galveston County Democratic Party in connection with federal elections have ever been made in cooperation, consultation or concert with, or at the request or suggestion of any of the party committees listed in Question 2. If yes, state the year(s) and candidate(s) supported.
9. State whether the Texas Democratic Party has ever requested or suggested to Galveston County Democratic Party that it make specific contributions to any federal candidates or has ever consulted or worked in concert with Galveston County Democratic Party in their making of any such contributions. If yes, state the year(s) and candidate(s) supported.
10. State whether the Galveston County Democratic Party has ever requested or suggested to any of the committees listed in Question 2 that they make specific contributions to any federal candidates or has ever been consulted or worked in concert with any of listed committees in their making of any such contributions. If yes, state the year(s) and candidate(s) supported.
11. Identify all individuals who hold or have held positions, whether paid or unpaid, with the Galveston County Democratic Party, and who hold or have also held positions, whether paid or unpaid, with any of the committees listed in Question 2.

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12. State whether the Texas Democratic Party has the authority or ability to hire, appoint, demote, remove or otherwise control the officers, or other decision-making employees, or members of Galveston County Democratic Party.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 4763

RESPONDENTS: Galveston County Democratic Party and Mary Ellen Brennan, as treasurer

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that no person or multicandidate political committee shall make contributions to a state or local party committee's federal account in any calendar year which in the aggregate exceed \$5,000, and prohibits the state or local committee from knowingly accepting such contributions. 2 U.S.C. § 441a(a) and (f); 11 C.F.R. §§ 110.1(d)(1), 110.2(d)(1) and 110.9(a).

Section 441a(a)(5) of the Act provides that all contributions made by political committees "established or financed or maintained or controlled by any . . . person, including any parent, subsidiary, branch, division . . . or local unit of such . . . person, or by any group of such persons, shall be considered to have been made by a single committee." The Commission's regulations characterize such committees as "affiliated committees." *See* 11 C.F.R. §§ 100.5(g), 102.2(b)(1) and 110.3. Recognizing the general applicability of the language of Section 441a(a)(5) to political party committees, Congress carved out a specific exception in section 441a(a)(5)(B),

which gives separate contribution limitations to "a single political committee established or financed or maintained or controlled by a national committee of a political party and [to] a single political committee established or financed or maintained or controlled by the State committee of a political party" *See also* 11 C.F.R. § 110.3(b)(1)(i)-(ii).

The Act, however, provides no specific exemption from contribution limitations for political committees of political parties at the county or other subordinate level of a party organization within a state.¹ Accordingly, the Commission has set forth the following presumption: "All contributions made by the political committees established, financed, maintained, or controlled by a State party committee and by subordinate State party committees shall be presumed to be made by one political committee." 11 C.F.R. § 110.3(b)(3). This regulation, when read together with 11 C.F.R. §§ 110.1(d)(1), 110.2(d)(1) and 110.3(a)(1), also means that a state party committee and its local affiliates together may receive a maximum of \$5,000 per year from any one person or multicandidate committee. *See Campaign Guide for Political Party Committees* at 9 (1996). The regulations go on to state, however, that the presumption of affiliation (and thus a single contribution limit) shall not apply if the "political committee of the party unit in question has not received funds from any other political committee established, financed, maintained, or controlled by any party unit," *and* the "political committee of the party unit in question does not make its contributions in cooperation, consultation or concert with, or at the request or suggestion of any other party unit or political committee

¹ A subordinate committee is "any organization which is responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State or any organization under the direction or control of the State committee." 11 C.F.R. § 100.14(b).

established, financed, maintained, or controlled by another party unit." 11 C.F.R.

§ 110.3(b)(3)(i)-(ii).

In Advisory Opinion ("AO") 1978-9, the Commission analyzed the relationship of county party committees in Iowa to the Iowa Republican State Central Committee through the use of the two factors listed in Section 110.3(b)(3), and concluded that they were not affiliated. The Commission observed that many of the county committees sent funds to the state committee, but that these funds were not deposited in the state committee's federal account. In addition, the county committees received funds from the state committee only in the form of monies raised through joint fundraising. The Commission noted that the transfer of funds raised through joint fundraising is specifically permitted by 2 U.S.C. § 441a(a)(5)(A), and concluded that the committees had not received funds from each other for the purposes of the regulation. The Commission also stated that the contributions by the county committees to federal candidates were not made in cooperation, consultation or concert with, or at the request or suggestion of, the state committee. Accordingly, the Commission concluded that the presumption at Section 110.3(b)(3) did not apply. Based in addition upon the state committee's representations that the county committees were created pursuant to state statute and not established by the state committee, as well as the general lack of control by the state committee over the county committees, the Commission held that the county committees were separate committees with their own contribution limits.²

² In subsequent enforcement matters involving state and subordinate party committees that discussed whether the first condition at Section 110.3(b)(3) was satisfied, the Commission has interpreted a party committee's "recei[pt of] funds," *see* Section 110.3(b)(3)(i), as limited to funds deposited into that committee's federal account. *See, e.g.,* Matter Under Review ("MUR") 2938 (deposit of funds received from a county party committee into a state party committee's non-federal account does not prevent the presumption of affiliation from being overcome); MUR 3054 (presumption

B. Factual Background

During 1996, the Texas Democratic Party ("State Committee"), the Bexar County Democratic Party, the Dallas County Democratic Party, the Galveston County Democratic Party, the Harris County Democratic Party, the Jefferson County Democratic Party, the Travis County Democratic Party, and the 21st Century Political Action Committee disclosed a combined total of \$109,666 in apparent excessive contributions received from the following political committees in the listed amounts:

Contributor	Amount in excess of \$5,000 limit
ATLA-PAC	\$35,000
AFSCME-PEOPLE	\$25,000
National Education Association Political Action Committee	\$15,000
Democratic Republican Independent Voter Education Committee (DRIVE)	\$10,000
UAW Voluntary Community Action Program	\$10,000
AFL-CIO Committee on Political Education/ Political Contributions Committee	\$5,000
Committee on Letter Carriers Political Education	\$5,000
Sherman for Congress	\$3,000
Machinists Non-Partisan Political League	\$1,250
Transportation Political Education League	\$230
Lone Star Fund	\$186

TOTAL EXCESSIVES: \$109,666

The excessive amounts received by each of the recipient party committees are summarized in the following table:

of affiliation does not apply because, *inter alia*, sole transfers between state party committee and county party committee were from state committee's non-federal account to county committee's non-federal account).

Recipient party committee	Amount received in excess of \$5,000 limit
State Committee	\$11,480
Bexar County Democratic Party	\$5,000
Dallas County Democratic Party	\$15,000
Galveston County Democratic Party	\$15,000
Harris County Democratic Party	\$30,000
Jefferson County Democratic Party	\$18,000
21st Century Political Action Committee	\$5,186
Travis County Democratic Party	\$10,000

TOTAL EXCESSIVES: \$109,666

During May and June of 1997, the Reports Analysis Division ("RAD") sent Requests for Additional Information ("RFAs") to the above party committees, informing each of them that, combined with their affiliated committees, they had received excessive contributions from various political committees. The RFAs recommended that the contribution amounts exceeding \$5,000 be transferred out to the committees' non-federal accounts or refunded to the donor committees. A Second Notice was sent to the Galveston County Democratic Party on July 17, 1997. On August 1, 1997, the Commission received a response from the Galveston County Democratic Party. While not addressing the issue of affiliation, the Galveston County Democratic Party stated that it did not believe that it had accepted excessive contributions.

C. Analysis

The primary issue in this matter is whether the Texas Democratic state and named county committees are affiliated and, hence, subject to a common contribution limit of \$5,000 per calendar year. If the committees are in fact affiliated, they appear to have violated the contribution limits of 2 U.S.C. § 441a by accepting a total of \$109,666 in excessive contributions from various political committees in 1996. The question of affiliation turns on the relationship

between the State Committee and the county committees and on the county committees' relationship to each other. The available information supports the presumption of affiliation among these state party and subordinate party committees contained in the Commission's regulations.

As stated above, the presumption of affiliation is applicable to all political committees established, financed, maintained, or controlled by a state party committee and by subordinate state party committees. *See* 11 C.F.R. § 110.3(b)(3). Stated succinctly, the import of this provision is that "contributions made by a State party committee and by subordinate party committees are presumed to be made by a single committee."³ Explanation and Justification for 11 C.F.R. § 110.3(b)(3), 54 Fed. Reg. 34102 (1990). The presumption does not apply if two conditions are met: (1) the political committee of the party unit in question has not received funds from another party unit's political committee; *and* (2) the political committee does not make its contributions in cooperation, consultation or concert with, or at the request or suggestion of another party unit or its political committees. *See* 11 C.F.R. § 110.3(b)(3)(i)-(ii).

As previously discussed, in AO 1978-9 the Commission applied these two factors in analyzing the relationship between the Iowa Republican State Central Committee and the Republican county central committees in the state. Although many of the county committees sent funds to the state committee, the Commission nevertheless determined that the first condition was satisfied, observing that these funds were not deposited in the state party's *federal* account. Because the county committees, in accordance with the second condition, did not

³ As mentioned, this provision also means that contributions *received* by a State party committee and by subordinate party committees are presumed to be *received* by a single committee.

appear to make their federal contributions in cooperation with or at the request of the state committee, the Commission found that the presumption of affiliation did not apply.

In the present matter, focusing only on monies reported as being deposited into the federal accounts of the State Committee and the Texas Democratic county committees, there appear to have been significant transfers of funds among these committees in 1996. During 1996 the State Committee transferred a total of \$83,236 to the county committees, including \$48,293 to the Galveston County Democratic Party, and the county committees transferred a total of \$108,543 to the State Committee, including \$5,800 from the Galveston County Democratic Party.

In earlier enforcement matters, the Commission has made findings of affiliation between state and subordinate party committees where lesser amounts were involved in the intra-party transfers, as well as where the transfers were characterized as quota or dues payments from one committee to another. In MUR 953, the Commission found that the presumption of affiliation applied because a state committee, the Republican Party of Wisconsin, had received transfers of funds totaling \$21,226 from 51 county party committees in Wisconsin during one year as a result of sharing agreements between it and the county party committees. Further, the state committee had made transfers to 17 county committees totaling \$21,226 in the same year. In MUR 1613, the Commission made a finding of affiliation between the Michigan Republican State Committee and three Republican county party committees, based in part on transfers of funds by the county committees to the state committee's federal account that had been made pursuant to a voluntary quota system. *See also* MUR 3054. In accordance with the Commission's previous findings that transfers of funds between the federal accounts of state and county party committees prevent

such committees from avoiding the presumption at 11 C.F.R. § 110.3(b)(3), the transfers of federal monies between the Texas Democratic county party committees and the State Committee support a presumption of affiliation.

While Texas law imposes no financial obligation upon the state or county party committees vis-à-vis each other, there appear to be no statutes prohibiting or limiting the State Committee from financing subordinate party committees or otherwise exerting substantial control over them. Texas election law does cover the establishment and composition of the county executive committees, *see, e.g.*, Tex. Elec. Code Ann. § 171.022 (West 1997), but it does not appear to address any aspect of the maintenance, control or financing of subordinate party committees by the respective state party committee, or vice versa.

An attachment to the State Committee's 1987 Statement of Organization includes the following statements: "The County Democratic Party committees of the Texas Democratic Party are neither established, controlled, nor financed by the State Party Committee. They do not receive funds from the State Party Committee, nor does the State Committee control their expenditures." While these claims may have been accurate at the time they were made, it appears that transfers of federal funds between the State Committee and the county committees generally started to occur after the county committees registered as political committees with the Commission (most registered in the early 1990s) and have continued up to the present. During the last two election cycles, disclosure reports filed with the Commission indicate that the State Committee transferred \$365,543 in federal funds to the named county party committees, including \$53,293 to the Galveston County Democratic Party, and the county committees transferred federal monies to the State Committee in the amount of \$108,563, including \$5,800

from the Galveston County Democratic Party. Accordingly, the State Committee and the county committees appear to have been partially financed by transfers of federal funds to each other.

In addition, the Galveston County Democratic Party listed the State Committee as an "Affiliated Committee" in its original Statement of Organization filed with the Commission. It has never filed any subsequent amendments claiming disaffiliation with the State Committee. Moreover, in its responses to the RFAs in which it claims independent committee status, the Galveston County Democratic Party has not offered any explanation that might serve to reconcile its current position with the information it provided upon registering as a political committee with the Commission.

In consideration of the foregoing, it is the view of the Commission that the facts of the instant matter support a finding of affiliation. The large transfers of federal funds among the Texas Democratic state and county party committees prevent them from avoiding the application of the presumption in 11 C.F.R. § 110.3(b)(3), and raise questions as to whether the county committees are to some extent controlled by the State Committee. As affiliated committees, they were limited to receiving \$5,000 in 1996 from any person or multicandidate political committee.

III. CONCLUSION

Based on the foregoing, it appears that the Galveston County Democratic Party accepted excessive contributions in 1996. Accordingly, there is reason to believe that the Galveston County Democratic Party and Mary Ellen Brennan, as treasurer, violated 2 U.S.C. § 441a(f).